



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/172836

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 2016, under Wis. Stat., §49.45(5)(a), to review a decision by Milwaukee Enrollment Services to discontinue Medical Assistance (MA), a hearing was held on May 18, 2016, at Milwaukee, Wisconsin, with the parties appearing by telephone. A hearing set for April 19, 2016 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner's appeal was untimely.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County. She resided in Milwaukee County until late-March, 2016.
2. Petitioner applied for BadgerCare Plus (BC+) MA on October 26, 2015 and was granted eligibility effective October 1, 2015. She reported no income on her application.
3. In December, 2015, the system uploaded automatically that petitioner was receiving \$370 per week unemployment compensation (UC). A notice was sent to petitioner on December 14, 2015

informing her that BC+ would end January 1 because income was over the limit. The notice included language that petitioner could appeal by February 16, 2016 if she disagreed with the action.

4. Also in early December the agency discovered that petitioner had been employed at [REDACTED]. On December 10 a verification request was sent for employment information at [REDACTED] [REDACTED], with a due date of December 21. No verification was received, and on December 23, 2015 a notice denying BC+ for January was sent to petitioner. That notice also told petitioner she could appeal by February 16, 2016.
5. Petitioner initially filed no appeal. On February 2, 2016, she contacted the agency about her BC+ ending. Petitioner informed the worker that she wanted to appeal the discontinuance of MA, and the worker sent her a blank appeal form. The worker also processed the contact as a new application and requested information about current employment. Petitioner did not provide that information and BC+ remained closed.
6. Petitioner filed this appeal on March 14, 2016.

DISCUSSION

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3)(a). Language concerning the right to appeal and the time limit is included on all department notices. An MA appeal must be made in writing; it cannot be made orally unless it is then reduced to writing. Wis. Admin. Code, §HA 3.05(2)(a). The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

Petitioner's written appeal was postmarked March 14, 2016. That is the date that the Division of Hearings and Appeals must consider the appeal date, even though petitioner told the agency worker that she wanted to appeal. Because petitioner's appeal of the January 1, 2016 discontinuance was untimely, this office does not have jurisdiction to review the merits of the discontinuance.

Petitioner initially told the worker on February 2 that she did not receive any notices even though they were sent to her correct address. During the hearing petitioner testified that she did not have time to read the notices in December. Failure to read notices is not an excuse for missing the appeal deadline.

CONCLUSIONS OF LAW

Petitioner's appeal of a BC+ discontinuance effective January 1, 2016 was filed untimely.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 24th day of May, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 24, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability